

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT HAIRSTON, :

Plaintiff, :

-against- :

05 Civ. 6642 (KMW) (AJP)

NEW YORK STATE, NEW YORK STATE :
DEPARTMENT OF CORRECTIONAL SERVICE,
C. O. LAMARCHE, C. O. WRIGHT & C. O. :
WALTS, :

Defendants. :

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REVISED
REPORT AND RECOMMENDATION

ANDREW J. PECK, United States Chief Magistrate Judge:

To the Honorable Kimba M. Wood, United States District Judge:

Plaintiff's complaint in this action was filed as of July 25, 2005. (Dkt. No. 1: Compl.)

Rule 4(m) of the Federal Rules of Civil Procedure provides:

Time Limit for Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. . . .

By Order dated September 7, 2005, I advised plaintiff that if the complaint was not properly served under Rule 4(m), that is, by November 22, 2005, I would recommend that the action be dismissed. (Dkt. No. 3.) I also directed plaintiff to provide my chambers with proof of service when made. (Id.)

Plaintiff has not provided my chambers with proof of service on defendants, and a review of the Court's docket sheet for this action discloses that there is no affidavit of service on file with the Clerk's Office. The Marshal's Office has advised my chambers that they have not received any request from plaintiff to serve defendants.

More than 120 days having passed from the filing of the amended complaint, and the Court having advised plaintiff of his obligations under Fed. R. Civ. P. 4(m), and there being no indication that plaintiff has had the complaint served on defendants, I recommend that the Court dismiss plaintiff's complaint without prejudice for failure to timely serve it pursuant to Fed. R. Civ. P. 4(m). See, e.g., Thompson v. Maldonado, 309 F.3d 107, 110 (2d Cir. 2002).

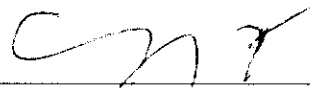
FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Kimba M. Wood, 500 Pearl Street, Room 1610, and to my chambers, 500 Pearl Street, Room 1370. Any requests for an extension of time for filing objections must be directed to Judge Wood. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140, 106 S. Ct. 466 (1985); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 513 U.S. 822, 115 S. Ct. 86 (1994); Roldan v. Racette, 984 F.2d 85, 89 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.), cert. denied, 506 U.S. 1038, 113 S. Ct.

825 (1992); Small v. Secretary of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 (2d Cir. 1983); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

DATED: New York, New York
December 1, 2005

Respectfully submitted,



Andrew J. Peck
United States Chief Magistrate Judge

Copies to: Robert Hairston
Judge Kimba M. Wood